LIBRARY
SUPREME COURT, U. S.

FEB 10 1968

JOHN F. DAVIS, CLERK

Supreme Court of the United States.

OCTOBER TERM, 1967.

No. 1104

PALMER C. SCAFATI, SUPERINTENDENT,
MASSACHUSETTS CORRECTIONAL INSTITUTION, WALPOLE,
Appellant,

v.

RONALD GREENFIELD,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS.

JURISDICTIONAL STATEMENT.

ELLIOT L. RICHARDSON,
Attorney General,
WILLIE J. DAVIS,
Assistant Attorney General,
HOWARD M. MILLER,
Assistant Attorney General,
RICHARD L. LEVINE,
Deputy Assistant Attorney General,
State House,
Boston, Massachusetts 02133,
Attorneys for Appellant.

ADDISON C. GETCHELL & SON, INC., LAW PRINTERS, BOSTON.

Table of Contents.

Opinions below	1
Jurisdiction	1
Statute involved	2
Questions presented	2
Statement of the case	3
Argument	5
I. The Federal District Court abused its discretion in failing to abstain from exercising its jurisdiction	5
II. Whether G.L. c. 127, § 129, as amended and applied to appellee, is an ex-post-facto law presents a substantial federal question not heretofore determined by this court	8
Conclusion	10
Appendix	11
A	11
B	16
C	18
D	20

Table of Authorities Cited.

Cases.

Allen v. Massachusetts Parole Board, 1967 Mass. Adv. Sh. 767, 226 N.E. 2d 257	4,.5, 6, 7
Calder v. Bull, 3 U.S. (3 Dall.) 386	9
Cummings v. Missouri, 4 Wall. 277 (1866)	9
Florida Lime & Avocado Growers, Inc., v. Jacobson, 362 U.S. 73 (1960)	2

Government Employees Committee v. Windsor, 353 U.S. 364 (1957) 6, 7
Hays v. Port of Seattle, 251 U.S. 233 (1920) 2
Herkness v. Irion, 278 U.S. 92 (1928) 2
KVOS, Inc., v. Associated Press, 299 U.S. 269 6
Lindsey v. Washington, 301 U.S. 397 (1937) 9
Medley, Petitioner, 134 U.S. 160 (1890) 9
Meridian v. Southern Bell Telephone & Telegraph Co., 358 U.S. 639 7
Query v. United States, 316 U.S. 486 (1942) 2
Stainback v. Mo Hock Ke Lok Po, 336 U.S. 368 8
Webster v. Fall, 266 U.S. 507 6
Zwickler v. Koota, 36 U.S.L.W. 4041 (1967) 5, 7

STATUTES.

28 U.S. Code § 1253 2
28 U.S. Code § 2281 1, 2
28 U.S. Code § 2284 1, 4
Mass. Acts of 1965, c. 884 3, 5, 6
Mass. G.L. c. 127, § 129 1, 2, 3, 7, 8, 9, 10

Supreme Court of the United States.

OCTOBER TERM, 1967.

No.

PALMER C. SCAFATI, SUPERINTENDENT,
MASSACHUSETTS CORRECTIONAL INSTITUTION, WALPOLE,
Appellant,
v.
RONALD GREENFIELD,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS.

JURISDICTIONAL STATEMENT.

Opinions Below.

The opinion of the United States District Court for the District of Massachusetts (App. A, *infra*, p. 11), dated December 8, 1967, has not yet been reported.

Jurisdiction.

This was a petition, brought by a Massachusetts prisoner, seeking injunctive relief under 28 U.S. Code, §§ 2281 and 2284, against the enforcement of Massachusetts G.L. c. 127, § 129, as amended by chapter 884 of the Acts of 1965, on the ground that said statute is unconstitutional as an ex-

post-facto law. A three-judge court was convened pursuant to 28 U.S. Code, § 2281. On December 8, 1967, the court ruled that the petitioner-appellee was "entitled to an order enjoining the forfeiture or suspension of good conduct deductions as provided for by Massachusetts Acts of 1965, c. 884, and requiring his present discharge." Appendix A, p. 15. On December 11, 1967, a stay of the order was granted pending appeal by the respondent-appellant (the Superintendent of the Massachusetts Correctional Institution at Walpole) to the Supreme Court of the United States. A notice of appeal was filed with the United States District Court for the District of Massachusetts by the appellant on December 11, 1967.

The jurisdiction of this court to review the order of the District Court is conferred by Title 28, U.S. Code, § 1253, which provides that this court may entertain an appeal from an order of a District Court of three judges. That such jurisdiction exists in the circumstances of this case is sustained by the following decisions:

Florida Lime & Avocado Growers, Inc., v. *Jacobson*, 362 U.S. 73 (1960).
Query v. *United States*, 316 U.S. 486 (1942).
Herkness v. *Irion*, 278 U.S. 92 (1928).
Hays v. *Port of Seattle*, 251 U.S. 233 (1920).

Statute Involved.

Massachusetts G.L. c. 127, § 129, as amended by chapter 884 of the Acts of 1965, hereinafter referred to as G.L. c. 127, § 129, is set forth in Appendix B, *infra*, p. 16.

Questions Presented.

1. Did the District Court abuse its discretion by interpreting and passing on the constitutionality of G.L. c. 127,

§ 129, as amended by Acts of 1965, c. 884, when the full bench of the Supreme Judicial Court had not yet determined the constitutionality of that statute?

2. Is G.L. c. 127, § 129, as amended, which provides a forfeiture of good-conduct deductions for a parole violator, an ex-post-facto law when applied to petitioner, who was in prison before the effective date of that statute, but paroled after the effective date?

Statement of the Case.

Massachusetts Acts of 1965, c. 884, amending G.L. c. 127, § 129, became operative on April 6, 1966, and provides that a parolee whose parole has been revoked and who has been returned to a correctional institution shall not receive good-conduct deductions for the first six months after his return. Appellee, a Massachusetts prisoner, was paroled after the effective date of the amendment. Thereafter he was returned to prison for violation of his parole. Under G.L. c. 127, § 129, prior to the amendment by Acts of 1965, c. 884, appellee would have been entitled to release before the filing of his petition in the Federal District Court (Appendix A, p. 12). If, however, the six-month forfeiture under the amendment was applicable to appellee, his release would have been delayed considerably.[1]

On October 10, 1967, a hearing was held before Garrity, J., to consider the prayer for appointment of a three-judge court. At the request of the court, the Assistant Attorney General, representing the appellant, agreed to file on behalf of the appellee (who then appeared before the court pro se), a petition for a writ of habeas corpus with the single

[1] The District Court did not find it necessary to pass on the exact time of the delay which was in controversy at the hearing on the merits (Appendix A, p. 12).

justice sitting in the Massachusetts Supreme Judicial Court and to recommend release of the appellee on personal recognizance (Tr. Oct. 10, p. 87). With this understanding the judge temporarily denied the request for a three-judge court (Tr. Oct. 10, p. 94). Subsequently, on October 11, 1967, Judge Garrity reconsidered his ruling and notified the Chief Judge of the circuit pursuant to 28 U.S. Code § 2284, of the prayer for the convening of the three-judge court. On October 16, 1967, the three-judge court was designated and a hearing on the merits was held on October 26, 1967. Meanwhile, the Assistant Attorney General on behalf of the appellee did present a petition to the single justice sitting in the Massachusetts Supreme Judicial Court who denied the petition (Tr. Oct. 26, p. 56). Concomitantly, it was brought to the attention of the District Court by the Assistant Attorney General that it was open to the appellee to appeal the decision of the single justice to the full bench of the Massachusetts Supreme Judicial Court and that the Commonwealth would not oppose bail pending such an appeal (Tr. Oct. 26, p. 57). The court thereupon inquired of the appellee through his counsel whether he would prefer not to be bailed and have the District Court pass on the question presented by his petition, or whether he would prefer to be bailed on the condition of appeal to the Massachusetts Supreme Judicial Court (Tr. Oct. 26, p. 59). Appellee responded that he desired the federal court to pass on the question (Tr. Oct. 26, p. 59). The federal court was of the opinion that it should delay no longer and that the decision of the single justice was in accord with the opinion of the full bench enunciated in the case of *Allen* v. *Massachusetts Parole Board*, 1967 Mass. Adv. Sh. 767, 226 N.E. 2d 257, although the federal court recognized that the opinion in *Allen* did not consider or resolve the constitutional issue (Appendix A, p. 12n.). The court thereupon

declared that Massachusetts Acts of 1965, c. 884, is an ex-post-facto law as applied to petitioner. The federal questions presented by this appeal are substantial, requiring consideration by this court by the filing of briefs on the merits and oral argument for their resolution, for the following reasons:

Argument.

I. The Federal District Court Abused its Discretion in Failing to Abstain from Exercising its Jurisdiction.

The failure of the District Court to abstain from exercising its jurisdiction in the circumstances of this case is an abuse of its discretion. Not only was this a situation where a state court had not had an opportunity to consider the interpretation of its own statute, but the vehicle for bringing that question to the full bench of the Supreme Judicial Court of Massachusetts was then pending in the Massachusetts courts. Moreover, this is not a situation that required an immediate determination of one's constitutional rights to prevent possible damage to that person's rights. The Commonwealth had done all in its power to prevent prejudice to appellee during a suggested hearing before the Massachusetts courts by promptly filing on behalf of appellee a petition for writ of habeas corpus with the single justice sitting in the Massachusetts Supreme Judicial Court and thereafter agreeing that it would not oppose release of the appellee on bail if he sought to appeal the decision of the single justice to the full bench of the Supreme Judicial Court.

While the federal District Court justified its failure to abstain on the basis of the opinions in the cases of *Allen* v. *Massachusetts Parole Board, supra,* and *Zwickler* v. *Koota,*

36 U.S.L.W. 4041 (1967), we submit that those cases do not present compelling reasons for the court to ignore the well-established principle of federal abstention. In *Allen* v. *Massachusetts Parole Board, supra,* the court did not consider the constitutionality of Acts of 1965, c. 884. The only issue considered was the arithmetic calculation to determine the forfeiture of good-conduct credits caused by a parole violation. It is true that the court applied chapter 884 to an inmate incarcerated before the effective date of the amendment. However, the court did not consider the amendment in the context of its constitutionality, considering whether or not it may be an ex-post-facto law. The ex-post-facto issue was only first squarely presented in this present case, and the appellant asserted only the right to have the federal court abstain from preventing the Massachusetts Supreme Judicial Court from interpreting its own statute. Where the court has not considered the matter in the context of alleged constitutional infirmities, "the most that can be said is that the point was in the case if anyone had seen fit to raise it. Questions which merely lurk in the record, neither brought to the attention of the Court nor ruled upon, are not to be considered as having been so decided as to constitute precedence." *KVOS, Inc.*, v. *Associated Press,* 299 U.S. 269, 279, citing *Webster* v. *Fall,* 266 U.S. 507. Likewise, in the case of *Government Employees Committee* v. *Windsor,* 353 U.S. 364, this Court expressed disaffection with reliance by a three-judge court on a state court's interpretation of a law where the federal constitutional question was not specifically considered by that court.

The court stated at page 366:

> "The bare adjudication by the Alabama Supreme Court . . . does not suffice, since that court was not asked to interpret the statute in light of the constitu-

> tional objections presented to the District Court. If appellants' freedom-of-expression and equal-protection arguments had been presented to the state court, it might have construed the statute in a different manner." Also see *Meridian* v. *Southern Bell Telephone & Telegraph Co.*, 358 U.S. 639, 640.

We therefore submit that the federal District Court improperly placed its reliance on the case of *Allen* v. *Massachusetts Parole Board, supra,* in failing to abstain from exercising its jurisdiction.

Likewise the opinion of *Zwickler* v. *Koota, supra,* did not present any compelling reasons to justify the District Court's failure to abstain. In *Zwickler* this court held that abstention would not be proper because the statute involved was so broad as to be incapable of rectification, regardless of state-court interpretation. More significantly, there was no litigation pending in *Zwickler,* nor was there any contemplated. In the case at bar, however, petitioner still had the opportunity to have the full bench of the Massachusetts Supreme Judicial Court decide the issue for the first time.

The *Zwickler* opinion represents no change in the long-standing abstention doctrines that—

> "One policy served by . . . [the practice of retaining jurisdiction but not deciding the case] is that of not passing on constitutional questions in situations where an authoritative interpretation of state law may avoid the constitutional issues. *Spector Motor Co.* v. *McLaughlin,* 323 U.S. 101, 105." *Government Employees Committee* v. *Windsor, supra,* 353 U.S. 364, 366.

If, as was the case in *Zwickler,* no interpretation by the state court could rescue the statute from unconstitution-

ality on its face, then the need for abstention might not be so pronounced. But the amendment to G.L. c. 127, § 129, is not so broad or vague that it could not be interpreted by the Massachusetts court in a manner that would avoid reaching the federal constitutional question.

> "[W]here equitable interference with state and territorial acts is sought in federal courts, judicial consideration of acts of importance primarily to the people of a state or territory should, as a *matter of discretion,* be left by the federal courts to the courts of the legislating authority unless exceptional circumstances command a different course." *Stainback* v. *Mo Hock Ke Lok Po,* 336 U.S. 368, 383, 384. (Emphasis supplied.)

We therefore submit that the facts of this case, presenting a situation where a case is pending before a state court involving the interpretation of a state statute and where no prejudice would fall upon a person alleging a violation of constitutional right by allowing the state court to interpret its own statute, present a substantial federal question requiring the filing of briefs on the merits and oral argument.

II. Whether G.L. C. 127, § 129, as Amended and Applied to Appellee, is an Ex-Post-Facto Law Presents a Substantial Federal Question Not Heretofore Determined by This Court.

The District Court has interpreted G.L. c. 127, § 129, in a manner inconsistent with the meaning of the phrase "ex post facto."

An ex-post-facto law has been defined as a law, passed after the occurrence of a fact or commission of an act,

which retrospectively changes the legal consequences or relations of such fact or deed. See *Medley, Petitioner,* 134 U.S. 160; *Calder* v. *Bull,* 3 U.S. (3 Dall.) 386. In the case at bar the appellee was paroled on October 24, 1966. The effective date of the statute was April 6, 1966. Clearly, before the petitioner was paroled, the statute was operative.

Since G.L. c. 127, § 129, as amended by Acts of 1965, c. 844, was in effect at the time the appellee was paroled, it is appellant's position that the relevant act is the violation of the terms of his parole, and not the commission of the original offense as held by the District Court.

All of the cases cited by the District Court involved statutes which, after the act of a party, altered his situation because of that act. For example, *Medley, Petitioner, supra,* 134 U.S. 160, involved a statute which prescribed the punishment for murder and which the government sought to apply to the petitioner for a murder he committed prior to the passage of the statute. In *Cummings* v. *Missouri,* 4 Wall. 277, a Catholic priest was convicted of the offense of refusing to take a test oath. The Missouri Constitution established the requirement of this oath after refusal by the priest to take the oath. In *Lindsey* v. *Washington,* 301 U.S. 397, after the commission of a crime by the petitioner, a statute was passed making the crime punishable by a mandatory fifteen-year sentence when prior thereto the judge had discretion to impose a sentence up to fifteen years.

In all of the cases cited above the statutes were passed at a time when no voluntary act of the prisoner could have changed his original sentence. Here the appellee knew that, if he violated parole, he would not receive good-conduct deductions for the first six months after his return to prison. The situation in which the appellee has found

himself, however, could have been avoided by his own actions.

Moreover, passing the merits of the federal court determination, the amendment to G.L. c. 127, § 129, as applied to appellee does not present a situation unique to Massachusetts law. It rather presents a situation which could apply to the administration of the penal system in all states and territories and presents a situation which has not been determined by this court. If the federal court is correct, does it mean that a state may never change the terms of parole, probation and work-release programs so as to affect persons then imprisoned? If so, does this mean that correctional officers must be responsible for determining the state of the law at the time of original imprisonment for every prisoner?

We submit that the resolution of these questions presents substantial federal questions requiring the submission of briefs on the merits and oral argument.

Conclusion.

For the foregoing reasons it is respectfully urged that the court allow the parties to submit briefs on the merits and to hold oral argument on the issues involved.

Respectfully submitted,

ELLIOT L. RICHARDSON,
Attorney General,
WILLIE J. DAVIS,
Assistant Attorney General,
HOWARD M. MILLER,
Assistant Attorney General,
RICHARD L. LEVINE,
Deputy Assistant Attorney General.

Appendix.

A.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 67-742-G

RONALD GREENFIELD,
Petitioner,
v.
PALMER C. SCAFATI, Superintendent,
Massachusetts Correctional Institution, Walpole,
Respondent.

Aldrich, Circuit Judge, and Caffrey and Garrity,
District Judges.

OPINION OF THE COURT

December 8, 1967

ALDRICH, Circuit Judge

Petitioner, a Massachusetts prisoner, seeks an injunction against the enforcement of a sentence under a state statute, Mass. Gen. Laws, ch. 127, § 129, as amended by Mass. Acts of 1965, ch. 884, on the ground that the amendment is unconstitutional as an ex post facto law. Pursuant to 28 U.S.C. § 2281 a three-judge district court was convened to consider the merits of his contention. We de-

layed our hearing briefly until a proceeding brought by petitioner in the state court had been determined adversely by a single justice of the Supreme Judicial Court. The single justice denied bail. We agree with petitioner that we should delay no further.[1] See Zwickler v. Koota, 36 U.S.L. Week 4041, (U.S. Dec. 5, 1967). Our first step was to grant bail, upon a stipulation that this release shall not affect the number of days eventually to be served by petitioner if he fails herein.

In 1962 petitioner was sentenced to a 5-7 year term by the Massachusetts Superior Court. Under section 129 of chapter 127 as then existing he was entitled to earn "good-conduct" deductions from the sentence imposed throughout the period of his incarceration. The Massachusetts practice, as testified to before us, is to compute at the time a prisoner commences service of sentence the total deductions which he may so earn and to deduct these from the maximum sentence, thus establishing at the outset a tentative date of release. Should the prisoner, through misbehavior, fail to earn any of the time already deducted, it is "forfeited" by an appropriate extension of the tentative date of release. Broad provision for forfeiture for misconduct during confinement is contained in the statute, but prior to ch. 884 no forfeiture was provided for violation of parole. Gildea v. Commissioner of Correction, 1957, 336 Mass. 48. The availability of good conduct deductions is considered an essential element of the sentence. Murphy v. Commonwealth, 1899, 172 Mass. 264; Gildea v. Commissioner of Correction, supra.

[1] We also agree with petitioner that the decision of the single justice accorded with the opinion of the full bench in a previous case, Allen v. Massachusetts Parole Board, 1967 Mass. A.S. 767, 226 N.E. 2d 257, except that Allen was a decision which granted the writ and did not resolve a constitutional issue.

By ch. 884 of the Acts of 1965 there was added to section 129 the following qualification:

> "A prisoner released on parole by the parole board, who has failed to observe all the rules of his parole and has been returned to a correctional institution for the violation of his parole, shall not receive deductions described in this section for any of the first six months after he is returned to the correctional institution."

Apparently recognizing that there might be objections to retrospective application, the legislature made the provision prospective to the extent that it was not to apply to persons currently on parole. It did, otherwise, apply to persons already under sentence. Petitioner, though sentenced before, was paroled after the amendment took effect, and upon his violation of parole and return to prison the statute was invoked. Consequently, whereas under the old statute it is conceded that petitioner, whose conduct since reincarceration has been good, would have been entitled to release prior to the bringing of this action, under the ch. 884 six months' disqualification his release is considerably delayed.[2] He contends that application of ch. 884 to him is constitutionally impermissible.

The Supreme Court has long construed Article I, section 10 of the Constitution to forbid the imposition of a sentence, by virtue of a change in the law, greater than the maximum sentence permitted at the date of the offense. Calder v. Bull, 1798, 3 U.S. (3 Dall.) 386; Cummings v. Missouri, 1866, 71 U.S. (4 Wall.) 277; Lindsey v. Washington, 1937, 301 U.S. 397. In fact, the Court has declared

---

[2] At the hearing before us a controversy developed as to how long, under the rule announced in the final paragraph of Allen, fn. 1, supra, the delay should be. We need not consider this question.

that "any law which was passed after the commission of the offense for which the party is being tried . . . which alters the situation of the accused to his disadvantage; . . ." is invalid as ex post facto. In re Medly, 1890, 134 U.S. 160, 171; cf. Rooney v. North Dakota, 1905, 196 U.S. 319. Accordingly, statutory reduction, after incarceration, of the amount of good conduct allowance which can be earned has been invalidated. Murphy v. Commonwealth, supra. "Depriving one of time off to which he was justly entitled as a practical matter results in extending his sentence and increasing his punishment." Lembersky v. Parole Board, 1955, 332 Mass. 290, 294. Since, concededly, the application of ch. 884 to petitioner has forever deprived him of the monthly allowances achievable in the first six months of his reconfinement, the question is whether this increase in sentence is constitutional because it was attached to parole.

The application of ch. 884 to persons sentenced for a crime committed after its effective date could raise no question. The possibility of a partial forfeiture of the right to earn deductions would have been contemplated in the sentence, and would therefore be within the maximum term provided for. Van Buskirk v. Wilkinson, 9 Cir., 1954, 216 F. 2d 735; Woods v. Steiner, D.Md., 1962, 207 F. Supp. 945, 949-50. The Commonwealth urges that it is also appropriate to apply the statute to one paroled after its enactment because acceptance of parole is a voluntary act. In other words, if a prisoner did not want to risk the penalty for violation, he need not take the parole offered. See Woods v. Steiner, supra, at 951.

The Commonwealth's argument must presuppose that parole is not like the good conduct deduction, but may be lawfully withdrawn altogether. It is true that parole is commonly spoken of as a matter of grace, and not of

right. E.g., Cox v. Maxwell, 6 Cir., 1966, 366 F. 2d 765; Curtis v. Bennett, 8 Cir., 1965, 351 F. 2d 931; Woods v. Steiner, supra. It would be more accurate, however, to say that a prisoner's entitlement to parole lies in the discretion of the parole board. It would not follow because a prisoner might not receive parole that it would not be an unlawful ex post facto burden to deprive him altogether of the right to be found qualified. Rather, we see no distinction between depriving a prisoner of the right to earn good conduct deductions and the right to qualify for, and hence earn, parole. Each, to quote In re Medly, supra, materially "alters the situation of the accused to his disadvantage." State ex rel. Woodward v. Board of Parole, 1924, 155 La. 699, 99 So. 534.

The same must be said as between providing unqualified parole and parole cum onere, i.e., subject to ch. 884. The difference between no penalty, other than a termination of the parole, and a substantial increase in imprisonment for violation, is far from inconsequential. To effect this by legislation enacted after the offense for which sentence was imposed cannot be constitutionally supported.

Petitioner is entitled to an order enjoining the forfeiture or suspension of good conduct deductions as provided for by Mass. Acts of 1965, ch. 884, and requiring his present discharge.

BAILEY ALDRICH
Circuit Judge

B.

STATUTE INVOLVED.

ACTS OF 1965, CHAPTER 884.

AN ACT ABOLISHING DEDUCTIONS FROM SENTENCE FOR GOOD CONDUCT IN THE CASE OF CERTAIN OFFENDERS AND REDUCING SUCH DEDUCTIONS IN THE CASE OF VIOLATORS OF PAROLE.

Be it enacted, etc., as follows:

SECTION 1. The first paragraph of section 129 of chapter 127 of the General Laws, as appearing in section 66 of chapter 770 of the acts of 1955, is hereby amended by inserting after the word 'month,' in line 20, the following:—; provided, however, that no prisoner serving a sentence imposed for a violation of section thirteen B, twenty-two, twenty-two A, twenty-three, twenty-four or twenty-four B of chapter two hundred and sixty-five or section seventeen, thirty-five or thirty-five A of chapter two hundred and seventy-two, or for an attempt to commit any crime referred to in said sections shall be entitled to have the term of his imprisonment under such sentence reduced under the provisions of this section.

SECTION 2. The next to the last sentence of the second paragraph of said section 129 of said chapter 127, as appearing in chapter 282 of the acts of 1961, is hereby amended by striking out, in lines 11 to 20, inclusive, the word ' ; provided, however, that when any person serving a sentence imposed for a violation of section thirteen B, twenty-two, twenty-two A, twenty-three, twenty-four or twenty-four B, of chapter two hundred and sixty-five, or section seventeen, thirty-five or thirty-five A of chapter two hundred and seventy-two, or for an attempt to commit any crime referred to in said sections is released in accordance with the provisions hereof, he shall not be given any cer-

tificate of discharge hereunder, but shall be released on parole and shall be subject to the provisions of law governing parole until the expiration of the term of imprisonment to which he has been sentenced'.

SECTION 3. The last paragraph of said section 129 of said chapter 127, as amended by chapter 535 of the acts of 1963, is hereby further amended by adding the following sentence:—A prisoner released on parole by the parole board, who has failed to observe all the rules of his parole and has been returned to a correctional institution for the violation of his parole, shall not receive deductions described in this section for any of the first six months after he is returned to the correctional institution.

SECTION 4. The provisions of section one hundred and twenty-nine of chapter one hundred and twenty-seven of the General Laws, as amended by sections one and two of this act, shall not apply to the deductions or term of imprisonment of any person sentenced prior to the effective date of this act. The provisions of section one hundred and twenty-nine of chapter one hundred and twenty-seven of the General Laws, as amended by section three of this act, shall not apply to any person who is paroled by the parole board prior to said effective date.

Approved January 7, 1966.

C.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RONALD GREENFIELD *v.* PALMER C. SCAFATI, Superintendent, Massachusetts Correctional Institution, Walpole	Civil Action No. 67-742-G

MEMORANDUM

October 11, 1967

GARRITY, J. The court held a hearing in this case yesterday to consider whether the petitioner's prayer for appointment of a three-judge court under 28 U.S.C. § 2284 should be granted. At the conclusion of the hearing, at which the Assistant Attorney General representing the respondent stated that he would file on behalf of the petitioner herein a petition for a writ of habeas corpus in the state court and would recommend release of petitioner on personal recognizance and that counsel be appointed for him, the court stated that it would deny the petitioner's prayer.

The court has reconsidered its ruling made while on the bench yesterday, especially in the light of Doud v. Hodge, 1956, 350 U.S. 485, 487, and concludes that the allegations of the petition present a federal constitutional question of sufficient substance to require the court to notify the Chief Judge of the Circuit pursuant to § 2284(1). The petition alleges that G.L. c. 127, § 129, as amended by Chapter 884 of the Acts of 1965, as interpreted by Allen v. Mass.

Parole Board, decided April 28, 1967, Mass. Adv. Shts. 767, conflicts with Art. I, § 10, cl. 1, of the Constitution of the United States. Basically, the petitioner's contention is that a 5 to 7 year sentence imposed upon him on July 20, 1962 was increased by the Acts of 1965, which has had the effect of depriving him of a good conduct deduction of 75 days to which he was entitled by the law as it stood at the time of sentence. See Lembersky v. Parole Board, 1955, 332 Mass. 290, 294.

At the hearing the respondent presented evidence that because of the provisions of Chapter 884 of the Acts of 1965 the petitioner will be kept in custody until December 5, 1967. But for this statute the petitioner would have completed his sentence and have been discharged from custody on September 21, 1967.

W. ARTHUR GARRITY, JR.
United States District Judge

D.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPREME JUDICIAL COURT

No. 66868 Law

RONALD GREENFIELD, *Petitioner*

vs.

COMMONWEALTH OF MASSACHUSETTS, PALMER C. SCAFATI, SUPERINTENDENT OF MASSACHUSETTS CORRECTIONAL INSTITUTION, WALPOLE, *Respondent*

MEMORANDUM

The petitioner was paroled on October 24, 1966. Chapter 884 of the Acts of 1965 became effective April 6, 1966. He now claims the act not effective as to him. However, he accepted his parole subject among other conditions to those imposed by Chapter 884. Having violated his parole he is now properly subject to the application of Chapter 884, and has no sound complaint that any of his constitutional rights have been violated.

PAUL C. REARDON

October 25, 1967 Justice, Supreme Judicial Court